



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JMM
F.#2013R00948

*610 Federal Plaza
Central Islip, New York 11722*

November 6, 2014

By ECF

Richard D. Haley, Esq.
Haley Weinblatt & Calcagni, LLP
16021 Veteran's Memorial Highway,
Suite 425
Islandia, New York 11749

Re: United States v. Philip Kenner
Criminal Docket No. 13-607(JFB)

Dear Mr. Haley:

On October 6, 2014, at 8:41 p.m., you filed on behalf of your client Philip Kenner a letter demanding to inspect certain evidence at the U.S. Attorney's Office on the following morning, October 7, 2014 prior to a scheduled status conference. See Attached ECF notice. When I saw you the next morning, you advised me of the filing, which I had not seen, and I informed you that the evidence you sought to inspect was in an evidence vault located at 26 Federal Plaza in Manhattan, and that without something more than an 8:41 p.m. filing on ECF, I would, unfortunately, be unable to arrange to have the materials available for inspection in Central Islip. I asked that you advise me as to your availability in advance so that we could schedule a convenient time and date for your inspection of the material with your client present.

Since October 6, 2014, I have seen you and spoken to you in person at the courthouse several times. We have discussed the above-referenced case, and the pending motions for access to the hard drives for a bail hearing. I believe I have been courteous and responsive to you in these discussions. On October 29, 2014, I personally located you inside the courthouse to convey a message from a cooperating client of yours in another matter and quickly arranged for you and that client to conduct a brief, impromptu meeting inside the United States Attorney's Office at the Central Islip courthouse.

At no time since your October 6 ECF filing have you requested or attempted to re-schedule the inspection of the laptops and cell phone. A short while ago, I read your November 6, 2014 letter to Judge Bianco at which you announce at page 3:

. . . I will arrive at the United States Attorneys' Office in Central Islip, New York at 10 a.m. on November 7, 2014 to physically

inspect my client's MacBook computer and i-Phone on behalf of my client in advance of the 11:00 a.m. court appearance.

Your letter was posted on ECF at 12:42 p.m. Because of other duties and cases, I did not see or read your submission until a short time ago, that is, sometime shortly before 4 p.m. That said, I contacted the case agents to attempt to arrange an inspection. I have re-confirmed, however, that the evidence you seek to inspect is still located at the FBI's evidence vault at 26 Federal Plaza, that is, approximately 51 miles away, and that because of other duties and cases being handled by those agents, it is not possible to have the material transported here within the time remaining.

Also, as a long-time practitioner in this district, you will recall that the United States Marshals Service will not typically transport or produce detained prisoners to any location other than court on Fridays because of the typical volume of prisoner transportations that occur on that most busiest of days on the court calendar. Thus proffers, for instance, or discovery inspections, are not typically permitted by the Marshals Service on Fridays.

Accordingly, I ask you again, respectfully and sincerely, to call, write, text, email, or simply ask me the next time we see each other to schedule a physical inspection of evidence, and I will gladly do so. I suggest since the case agents will be present at tomorrow's conference that we take time, in your client's presence, to schedule a mutually convenient date and time and consistent with the Marshals Service's policies.

Very truly yours,

LORETTA E. LYNCH
United States Attorney

/S/

By:

James Miskiewicz
Assistant U.S. Attorney

cc: Hon. Joseph F. Bianco (via ECF)